

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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**MARK FOGEL,**

Plaintiff,

Civil Action no.:

-against-

**COMPLAINT**

**THE CITY OF NEW YORK,**

Defendant.

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The Plaintiff, by his attorney, LAWRENCE P. WOLF, ESQ., complains of the Defendant as follows:

**JURISDICTION**

1. This Court has jurisdiction over the first cause of action pursuant to 42 U.S.C 1983.
2. This Court has pendant jurisdiction over the remaining cause of action.

**FIRST CAUSE OF ACTION**

3. The Plaintiff was, at all relevant times a resident of the County of Nassau and State of New York and a citizen of the United States.
4. The Defendant, THE CITY OF NEW YORK, was at all relevant times, a municipal corporation organized pursuant to the laws of the State of New York.
5. The Defendant maintained a policy or custom that caused the Plaintiff to be subjected to a denial of his constitutional rights.

6. The Defendant failed to adequately train and monitor members of the Police Department, and such failure amounts to a deliberate indifference to the rights of persons with whom said persons come into contact.

7. The Defendant knew or should have known that its employees would victimize persons, cause them to be incarcerated and or to be maliciously prosecuted, knew that the supervision, training, monitoring and verification of their actions could avoid such improper conduct and knew that the absence of training, supervision, monitoring and or verification of actions caused the Defendant to engage in such prohibited conduct.

8. By reason of the above, the Defendant deprived the Plaintiff of rights, privileges and immunities secured by the Constitution of the United States and laws to wit the Fourth and Fourteenth Amendments thereof, within the meaning of 42 USC § 1983.

9. That as a result of the aforesaid the Plaintiff, Mark Fogel, was injured and suffered damages.

### **SECOND CAUSE OF ACTION**

10. On or about March 5, 2014, the Plaintiff was arrested and imprisoned overnight and such incarceration continued for approximately 19 hours.

11. The Defendant intended to confine the Plaintiff.
12. The Plaintiff was conscious of the confinement.
13. The Plaintiff did not consent to the confinement.
14. The confinement was not otherwise privileged.
15. Thereafter the Defendant initiated a criminal proceeding against Plaintiff.
16. The Defendant knew that the arrest and incarceration were baseless and not supported by any evidence.
17. Prior to the trial of Mark Fogel, Defendant therein had moved the Criminal Court for a summary dismissal wherein Defendant therein "laid bare" its proof that the charges against him were baseless.
18. Nevertheless, after numerous Court proceedings, the Defendant instructed the District Attorney to "try" this case without any evidence as demonstrated by the testimony at trial.
19. On or about January 6, 2015, the criminal proceeding was terminated favorably to the Plaintiff, Mark Fogel, when he was acquitted of all charges against him, after trial. Defendant's

case was dismissed after its witness testified; Plaintiff called no witnesses. There was no testimony elicited supporting the arrest.

20. The criminal proceeding was brought without probable cause that Plaintiff had committed a crime.


21. The proceeding was brought with malice and with the intent to injure the Plaintiff.

22. On March 17, 2015, the Plaintiff served a notice of this claim upon the Defendant, in compliance with the requirements of General Municipal Law § 50-e.

23. As a result of the aforesaid malicious prosecution, the Plaintiff, Mark Fogel, was injured and suffered damages, including the cost of criminal defense.

WHEREFORE, the Plaintiff demands judgment of the Defendant, City of New York, for and in the amount of \$1,000,000.00 together with the costs and disbursements of this action.

DATED: New York, New York  
June 2, 2015



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